

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shl

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5 In the Matter of:

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7 GENESIS GLOBAL HOLDCO, LLC,

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9 Debtor.

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12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004-1408

15

16 Wednesday, February 21, 2024

17 11:22 AM

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21 B E F O R E :

22 HON. SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: ARIANNA PERSAUD

1 CONFERENCE re discovery requests in connection with a
2 pending 9019 motion

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4 RULING re discovery requests in connection with a pending
5 9019 motion

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25 Transcribed by: Doreen A. Bolognini

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1 P R O C E E D I N G S

2 THE COURT: Good morning. This is Judge Sean Lane
3 in the United States Bankruptcy Court for the Southern
4 District of New York, and we're here for an 11 o'clock
5 conference in the Genesis case, specifically about a
6 discovery issue that has arisen.

7 And so, let me start by getting appearances, first
8 on the behalf of the Debtor.

9 MR. KESSLER: Good morning, Your Honor. Tom
10 Kessler from Cleary Gottlieb Steen and Hamilton, on behalf
11 of the Debtors. And I am joined this morning by my partner
12 Sean O'Neal.

13 THE COURT: All right. Good morning. And on
14 behalf of DCG?

15 MR. WESNESKI: Good morning, Your Honor. Josh
16 Wesneski from Weil Gotshal and Manges, on behalf of DCG.
17 With me is Jeff Saferstein and Furqaan Siddiqui.

18 THE COURT: All right, good morning. On behalf of
19 the Ad Hoc Group?

20 MR. ROSEN: Good morning, Your Honor. Brian
21 Rosen, Proskauer Rose. With me this morning is Mr. Jordan
22 Sazant.

23 THE COURT: Good morning. On behalf of the Crypto
24 Ad Hoc Group?

25 MS. GRIFFITH: Good morning, Your Honor. Greer

1 Griffith from McDermott Will and Emery. With me today is my
2 colleague Joe Evans.

3 THE COURT: All right, good morning. And anyone
4 else who needs to make an appearance this morning who I may
5 have inadvertently overlooked?

6 MS. KAUL: Good morning, Your Honor. Sequoia Kaul
7 from White and Case on behalf of the Committee of Unsecured
8 Creditors.

9 THE COURT: All right. My apologies. I -- I had
10 you written down but I hadn't called you, so I clearly
11 goofed there. Thank you very much for making your presence
12 known.

13 Anyone else who needs to make an appearance? All
14 right. So today is the follow-up on a conversation that was
15 -- that we dipped our toe in the water but didn't actually
16 fully jump in the other day.

17 And, Mr. Kessler, I think it was your discovery
18 issue, so why don't you start us off and I will make sure to
19 circle the virtual room for everybody's views who's
20 interested before we're done.

21 MR. KESSLER: Very good. Thank you, Your Honor.
22 Tom Kessler from Cleary Gottlieb, again for the record.
23 This is a, I think, a pretty straightforward dispute that we
24 have with DCG.

25 We served discovery requests on DCG in connection

1 with a pending 9019 motion seeking to settle the New York
2 Attorney General's claims. Among other things, those
3 requests asked for communications between DCG and the New
4 York Attorney General's Office. The time period that we
5 sought for those communications was July 14th, 2023 through
6 February 8th, 2024. That's the same period that DCG asked
7 for communications from the Debtors and the same period that
8 the Debtors produced communications in response to DCG's
9 requests.

10 After some back and forth, DCG has agreed to
11 produce, and just this morning has produced communications
12 beginning on October 19th, 2023. That's the date of the New
13 York Attorney General's initial complaint, but they have
14 refused to provide documents from the earlier period, from
15 July 14th through 10/19. And argue those documents are
16 every bit as responsive as the later set.

17 Number 1, as I mentioned, it's the same time
18 period that DCG itself sought discovery from the Debtors
19 for. And I think more directly, during the discovery that
20 has been adduced over the past week, there have been lines
21 of questioning and depositions that have inquired as to the
22 appropriateness of the settlement in light of the purported
23 or relative value of the claims asserted by the New York
24 Attorney General. There have been questions questioning the
25 timing of the settlement discussions that the Debtors were

1 having with the New York Attorney General's Office.

2 And so, from our perspective, to the extent that
3 there were communications going on between DCG and between
4 the New York Attorney General, in particular, with respect
5 to a potential settlement of the claims that were being
6 investigated and then formally brought by the New York AG,
7 we think that bears on the arguments that we expect DCG to
8 make in their filing here in about half an hour.

9 So it's a small -- as far as we understand it's a
10 narrow time parameter. I expect it to be a small set of
11 documents. I will confess that as of the last discussion we
12 had with DCG's Counsel yesterday late afternoon, it was our
13 understanding that they had not searched for those
14 communications and couldn't tell whether or what the volume
15 of those communications would be or whether there were any
16 relative communications in that time period. And so,
17 without that information we're simply not in a position to
18 accept the premise that searching, collecting, and producing
19 those documents would somehow be a burden.

20 THE COURT: All right. Mr. Wesneski, what can you
21 tell me?

22 MR. WESNESKI: Sure, Your Honor. Thank you. Josh
23 Wesneski of Weil Gotshal, on behalf of DCG. Just one quick
24 point in response to Mr. Kessler's last comment. We have
25 undertaken some efforts to figure out the universe of

1 documents here.

2 As I expressed to Mr. Kessler, the challenge with
3 the additional time period is that there are additional
4 custodians we would have to collect from beyond what has
5 already been done. We are working with those folks to try
6 and get ahead of this issue if we need to, but there are
7 documents that we don't believe are relevant but would be
8 perhaps technically responsive to the RFP's from the
9 Debtors. So there are some documents, again, we don't think
10 they're relevant.

11 But I think more -- more sort of centrally, you
12 know, we're here on a motion by the Debtors to approve of a
13 settlement between the Debtors and the New York Attorney
14 General. DCG is not a party to that settlement. The claims
15 against DCG are not being settled under that agreement.
16 They're not even really at issue except perhaps
17 collaterally.

18 So what DCG thinks about the claims against it or
19 the efforts with the New York Attorney General to settle
20 with those claims, has really no bearing on whether or not
21 the settlement here for the Debtors is justifiable within
22 the range of reasonable settlement.

23 THE COURT: Well, I'm not so sure about that,
24 right? The -- I've read the complaint. It's customer-
25 focused to say that at the end of the day they think the

1 customers ended up on the short end of the stick and that
2 that was a result of -- of the actions of the Defendants.
3 And so, if -- if that's the case, how exactly the actions of
4 various parties overlapped in terms of what the customers
5 ultimately got in the AG's point of view, the actual overlap
6 may be not precise, but if -- I'm having trouble siloing it
7 as a totally separate issue.

8 And so, if -- if you're going to make a run at the
9 claim saying -- and I think it was just said about whether
10 the -- there's essentially questioning the relative value of
11 the claim, I think is how Mr. Kessler put it -- I -- I --
12 I'm having trouble understanding why those conversations
13 couldn't theoretically be -- be relevant.

14 MR. WESNESKI: Well, I think, Your Honor, there's
15 -- there are two questions. One is with respect to the
16 underlying conduct, is there overlap between the claims
17 against DCG and the claims against the Debtors; and
18 certainly that's the case. Much of the, you know, the same
19 -- much of the same conduct that is alleged with respect to
20 the Debtors also forms the basis for the claims against DCG.
21 And we think that there are additional arguments that DCG
22 has access to that the Debtors don't have access to, but --
23 but I agree certainly, as sort of basically that the
24 allegations are the same.

25 But what we're asking here is whether the

1 negotiations as to a settlement overlap or are relevant to
2 the evaluation of the settlement put forth by the Debtors
3 that focuses exclusively on the Debtor's (inaudible).

4 So the Debtors certainly are of the opinion
5 through the settlement that their claims can be desegregated
6 from those of DCG, that they can be evaluated separately and
7 they can be settled separately. So they've taken that
8 position that they can in fact be siloed; they have siloed
9 them in their settlement with the New York Attorney General.
10 So we don't think that they can pull in the claims against
11 DCG and look at, you know, what DCG has advocated to the New
12 York Attorney General about the value of those claims or the
13 merits of those claims, to say whether the settlement here
14 is within the reasonable range of values.

15 And I'll add just one more point here. You know,
16 we -- we have been trying to work collaboratively and -- and
17 productively with the Debtors, and I think that we have done
18 so on both sides. Where we were, you know, sort of headed
19 was to try and figure out what actually is it that the
20 Debtors want here. You know, I understood the Debtors were
21 principally concerned about was the timing point.

22 The timing of the settlement discussions between
23 the Debtors and the New York Attorney General has lined up
24 or not lined up with what DCG was doing within that same
25 time period. And the time period that was represented to me

1 was late-Fall through February 2024. That's the time period
2 that the Debtors are concerned about with respect to their
3 negotiations and we've produced the documents between DCG
4 and the New York Attorney General in that timespan.

5 What we're talking about is pre-complaint
6 negotiations or discussions or communications that -- that
7 necessarily would not overlap or line up with the -- the
8 time period that we're talking about later on between the
9 Debtors and the New York Attorney General. So I think based
10 on what they have represented to us at least, is the basis
11 for why they need these documents. We've provided all the
12 information that they need to make any deductions or
13 conclusions about what DCG was saying or negotiating with
14 the New York Attorney General during those relevant time
15 period.

16 So I think, you know, we're already sort of on --
17 I think we're already sort of in the outer boundaries of
18 relevancy. You know, we wanted to negotiate that. We
19 wanted to compromise so that's why we produced the documents
20 that we did. But now, trying to go even further to a time
21 period that we think really doesn't have any overlap or
22 relevance to what the Debtors have indicated is the basis
23 for their document request.

24 THE COURT: All right. Let me circle the room,
25 and we'll start with the official committee.

1 MS. KAUL: Nothing from us, Your Honor.

2 THE COURT: All right. Anything from the Ad Hoc
3 Group?

4 MR. ROSEN: Nothing, Your Honor, other than the
5 fact that I thought it was interesting that Mr. Wesneski
6 said that this was a settlement and that they really didn't
7 have anything to say about it because it was a settlement
8 that the Debtors entered into, and yet they served us with
9 discovery, claiming that we should be responsive to that,
10 even though the Ad Hoc Group was not a party to the
11 settlement itself. I thought it was just a little bit
12 contradictory on his part. Thank you, Your Honor.

13 THE COURT: All right, thank you. On behalf of
14 the Crypto Ad Hoc Group?

15 MS. GRIFFITH: Nothing from us, Your Honor.

16 THE COURT: All right. Anybody that I may have
17 missed who wants to chime in? All right.

18 I am -- I'm -- see this the way the Debtors see
19 this for a couple of reasons. I -- I -- the notion that you
20 can have exactly the same -- I mean, there was a concession
21 that this is overlapping conduct for the claim, same
22 allegations, and the notion you can silo it simply because
23 there's a settlement of one party and not another, that
24 doesn't make any sense to me, right? Individual defendants
25 settle cases all the time. That doesn't mean that -- and --

1 and settling or not settling is a -- is a function of a lot
2 of different considerations by parties. But that doesn't
3 mean in an instance where you're really talking about the
4 same allegations that -- that if the -- if -- if DCG is
5 asked for this kind of information for this exact same
6 period, it -- it seems frankly, fairly aggressive to say
7 that -- that what's good for the goose isn't good for the
8 gander. And so, I don't -- I -- I don't see any way that
9 this isn't relevant.

10 Now again, I don't know exactly when who was
11 talking to with who about what, but that's not the way you
12 look at discovery because that's what the -- the argument
13 will be about the 9019 and the merits of whatever the issues
14 are. But for purposes of discovery, the fact that there's
15 overlapping allegations by the AG's about what they view as
16 improper conduct that led them to sue the parties that they
17 sued because of damage to the customers is -- so it seems to
18 be -- if it's relevant for the Debtors and indeed for the Ad
19 Hoc Group, it -- it would seem to certainly be fair game for
20 DCG.

21 And as to the timeframe, I can understand the
22 timeframe issue but again, it's what DCG has asked for the
23 same timeframe, and if -- if you think that timeframe is
24 relevant, then it seems only fair to -- to hold you to that
25 same view when -- when looking at discovery the other way.

1 So -- so from my point of view, it also doesn't
2 seem to be frankly, a particularly voluminous set of
3 documents that you're going to get, you know, in terms of
4 what discovery looks like it matters. It seems to be fair,
5 and again, it seems to be proportional to what the ask is
6 for -- for the other way.

7 And so, again, given the same -- same allegations,
8 the fact that you're -- you're both -- both parties are --
9 are parties to the AG's lawsuit and -- and what the
10 settlement is, the reasonableness as to the settlement
11 really has to do with people's views about the litigation.
12 It seems to be fair game.

13 So -- so that's my ruling and I trust that those
14 documents can be searched for and produced. It sounds like
15 there are additional custodians. And so, in light of that,
16 what I'd ask is that those documents be produced as soon as
17 possible on a rolling basis. There's no need to wait for
18 all the documents to be assembled to start producing what
19 you already have in your possession.

20 And so with that, any other issues anyone needs to
21 address here this morning?

22 MR. SAFERSTEIN: Your Honor, if I may? Jeffrey
23 Saferstein from Weil Gotshal on behalf of DCG.

24 THE COURT: Okay.

25 MR. SAFERSTEIN: Your Honor, I just wanted to

1 preview for the Court our objection will be filed in the
2 next 20 minutes or so to the motion for approval to
3 settlement with the New York Attorney General. And again, I
4 want to preview for the Court we're going to be filing that
5 under seal given the confidential information that we've
6 received from other parties.

7 So as we discussed yesterday, our plan is to work
8 with parties to see what actually needs to be redacted and
9 filed under seal and what does not. But I just wanted to
10 let Your Honor know that that was happening.

11 THE COURT: I appreciate that. And -- and
12 frankly, those conversations are easier to have when you
13 file what you have filed, and then you can send it out to
14 people and say what if anything needs to remain under seal.
15 So I think the one-step, two-step we're going to have then
16 is -- is what we sort of contemplated the other day. You
17 file it under seal and then once you have those
18 conversations you file a -- a subsequent unredacted, either
19 full or partially unredacted document that you can link back
20 on the ECF system to the original filing and so people will
21 understand sort of the one-step, two-step. But thank you
22 for the heads-up.

23 And obviously do us a favor and send us an
24 unredacted copy. I know you all have been very good about
25 doing that. You'd be surprised the cases where sometimes we

1 -- we have to ask people to get those and we really -- when
2 something's redacted obviously, we -- you don't send it to
3 us, we don't have it. So that would be great. Thank you
4 for bringing that issue up. Anything else?

5 MR. SAFERSTEIN: Nothing here, Your Honor. Thank
6 you.

7 THE COURT: All right.

8 MR. KESSLER: Your Honor, it's Tom Kessler from
9 Cleary Gottlieb again for the Debtors. Two short things.
10 One, like Mr. Saferstein, I suspect we'll also be filing our
11 reply under seal and we'll work with everyone to make sure
12 that we're following the proper procedures.

13 I appreciate Your Honor's direction in terms of
14 rolling production. I would just say that given that our
15 objection that our reply deadline is coming by Friday mid-
16 day, that we would ask that that production of documents be
17 completed not later than tomorrow.

18 THE COURT: Yeah, I think it needs to be completed
19 as soon as possible. I -- I would agree with that, and
20 because the alternative is something nobody wants, which is,
21 Your Honor, we're making an argument here sitting in court
22 that we could make in our papers because we didn't have the
23 documents, and that's bad for everybody. We'd much rather
24 have everybody be able to -- to lay out what they want in
25 their papers and then we at least know what we're fighting

1 about, so it's in everybody's interest to have that step
2 taken.

3 So obviously I'm -- I'm not on the ground here so
4 I don't really know what the production involves, so I have
5 the luxury of saying do it as quickly as possible and hope
6 that that will resolve all issues. Being in your shoes in
7 the past, I -- I know it's not that simple but I appreciate
8 all efforts that you can take to remove this as an issue.

9 MR. WESNESKI: Thank you, Your Honor. This is
10 Josh Wesneski from DCG. I have every confidence that we'll
11 be able to produce them tomorrow, and if for some reason
12 there is issues, Mr. Kessler and I will work them out as I
13 think we've been able to in the past, but I have every
14 confidence we'll be able to meet that deadline.

15 THE COURT: All right. I appreciate it. And
16 obviously, given the complexity of the litigation, the fact
17 that I've had a very small amount of conversations of this
18 type is attributed to the fact that you're working together
19 and communicating well, and I appreciate that. We all know
20 how poorly cases work when that's not happening. So thank
21 you all very much. And with that, I bid you all --

22 MS. GRIFFITH: Your Honor?

23 THE COURT: Yes.

24 MS. GRIFFITH: Your Honor, Greer Griffith from the
25 Crypto Creditor Ad Hoc Group. While we're all together, I

1 have a brief clarification question about the hearing next
2 week. I believe at an earlier conference with you, you
3 mentioned that each of the parties would have 15 minutes for
4 an opening statement. I'm just following up to confirm that
5 that is correct and that is still your intention.

6 THE COURT: Yeah, that's my intention, just to
7 basically the layout, the skeleton on which the various
8 facts will come in and how they fit. But 15 minutes is
9 really 15 minutes in the sense of what I need is the basics.
10 We'll obviously get into things in granularity, certainly
11 your papers do that. But yeah, 15 minutes would -- would
12 work.

13 I -- I -- depending on the -- the extensiveness of
14 the objections, I -- I may have to think about whether if
15 the Debtors are responding to a number of different
16 objections, whether that's sufficient time, but then again,
17 if the Debtors and the various other parties in support are
18 splitting up arguments and we have roughly the same number
19 of people on, for and against, then it may work itself out.
20 But -- but yes, so the idea is -- is brief opening
21 statements.

22 MS. GRIFFITH: Thank you, Your Honor.

23 THE COURT: Certainly. And that's -- obviously
24 it's much easier to figure out the logistics and to deal
25 with all that stuff when we're in person as opposed to Zoom,

1 not that Zoom isn't efficient and effective for lots of
2 things, but for -- for the more complicated you get, as we
3 all know, the harder it is to make it work effectively, so.

4 All right. Anything else from any other party?

5 All right.

6 UNIDENTIFIED SPEAKER: Not from us, Your Honor.

7 THE COURT: Thank you all for taking the time
8 today. Be well and see you all soon.

9 UNIDENTIFIED SPEAKER: Thank you very much, Your
10 Honor.

11 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

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13 (Whereupon these proceedings were concluded at
14 11:44 AM)

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C E R T I F I C A T I O N

I, Doreen A. Bolognini, certified that the foregoing

record of the proceedings.



Doreen A. Bolognini

Veritext Legal Solutions

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Date: February 24, 2024

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Page 1

&	4	aggressive 14:6	asking 10:25
& 3:3,11 4:4,12	41st 3:23	agree 10:23 17:19	assembled 15:18
1	7	agreed 7:10	asserted 7:23
1 7:17	767 3:13	agreement 9:15	attorney 7:2,4 7:13,24 8:1,4
10/19 7:15	8	ahead 9:6	9:13,19 11:9
10004-1408 1:14	8th 7:6	allegations 10:24 13:22	11:12,23 12:4
10006 3:6	9	14:4,15 15:7	12:9,14 16:3
10017-3852 4:7	9019 2:2,5 7:1 14:13	alleged 10:19	attorneys 3:4 3:12,21 4:5,13
10020-1095 4:15	a	alternative 17:20	attributed 18:18
10036-8299 3:24	able 17:24 18:11,13,14	americas 4:14	avenue 3:13,23 4:6,14
10153-0119 3:14	accept 8:18	amount 18:17	b
11 5:4	access 10:22,22	anybody 13:16	b 1:21 4:10
11501 21:23	accurate 21:4	apologies 6:9	back 7:10 16:19
11:22 1:17	actions 10:2,3	appearance 6:4,13	bad 17:23
11:44 20:14	actual 10:5	appearances 5:7	bankruptcy 1:1,12,23 5:3
1221 4:14	actually 6:15 11:19 16:8	appreciate 16:11 17:13	based 12:9
14th 7:5,15	ad 3:21 4:5 5:19,24 13:2	18:7,15,19	basically 10:23 19:7
15 19:3,8,9,11	13:10,14 14:18 18:25	appropriaten... 7:22	basics 19:9
19th 7:12	add 11:15	approval 16:2	basis 10:20 12:10,22 15:17
2	additional 9:3 9:3 10:21	approve 9:12	bearing 9:20
20 16:2	15:15	argue 7:15	bears 8:7
2023 7:5,12	address 15:21	argument 14:12 17:21	beginning 7:12
2024 1:16 7:6 12:1 21:25	adduced 7:20	arguments 8:7 10:21 19:18	behalf 5:8,10 5:14,16,18,23
21 1:16	advocated 11:11	arianna 1:25	6:7 8:23 13:13
23-10063 1:3	afternoon 8:12	arisen 5:6	15:23
24 21:25	ag 8:6	asked 7:3,6 14:5,22	believe 9:7 19:2
3	ag's 10:5 14:15 15:9		
300 21:22			
32891 21:5			
330 21:21			

[beyond - deadline]

Page 2

beyond 9:4 bid 18:21 bit 7:16 13:11 bolognini 2:25 21:3,7 boundaries 12:17 bowling 1:13 brian 4:1 5:20 brief 19:1,20 bringing 17:4 brought 8:6 burden 8:19	clarification 19:1 clearly 6:10 cleary 3:3 5:10 6:22 17:9 collaboratively 11:16 collaterally 9:17 colleague 6:2 collect 9:4 collecting 8:18 come 19:8 coming 17:15 comment 8:24 committee 4:13 6:7 12:25 communicati... 18:19 communicati... 7:3,5,7,8,11 8:3,14,15,16 12:6 complaint 7:13 9:24 12:5 completed 17:17,18 complexity 18:16 complicated 20:2 compromise 12:19 concerned 11:21 12:2 concession 13:20	concluded 20:13 conclusions 12:13 conduct 10:16 10:19 13:21 14:16 conference 2:1 5:5 19:2 confess 8:11 confidence 18:10,14 confidential 16:5 confirm 19:4 connection 2:1 2:4 6:25 considerations 14:2 contemplated 16:16 contradictory 13:12 conversation 6:14 conversations 10:12 16:12,18 18:17 copy 16:24 correct 19:5 counsel 8:12 country 21:21 couple 13:19 court 1:1,12 5:2,3,13,18,23 6:3,9 8:20 9:23 12:24 13:2,13	13:16 15:24 16:1,4,11 17:7 17:18,21 18:15 18:23 19:6,23 20:7 creditor 4:5 18:25 creditors 4:13 6:8 crypto 4:5 5:23 13:14 18:25 currency 3:12 custodians 9:4 15:15 customer 9:24 customers 10:1 10:4 14:17
c			d
c 3:1 5:1 21:1,1 called 6:10 case 1:3 4:12 5:5 6:7 10:3,18 cases 13:25 16:25 18:20 centrally 9:11 certainly 10:18 10:23 11:4 14:19 19:10,23 certified 21:3 challenge 9:2 chime 13:17 circle 6:19 12:24 claim 10:9,11 13:21 claiming 13:9 claims 7:2,23 8:5 9:14,18,20 10:16,17,20 11:5,10,12,13			d 3:17 5:1 damage 14:17 date 7:12 21:25 day 6:16 9:25 16:16 17:16 dcg 3:12 5:14 5:16 6:24,25 7:3,6,10,18 8:3 8:7,23 9:14,15 9:18 10:17,20 10:21 11:6,11 11:11,24 12:3 12:13 14:4,20 14:22 15:23 18:10 dcg's 7:8 8:12 deadline 17:15 18:14

deal 19:24 debtor 1:9 3:4 5:8 debtor's 11:3 debtors 5:11 7:7,8,18,25 9:9 9:12,13,21 10:17,20,22 11:2,4,17,20 11:20,23 12:2 12:9,22 13:8 13:18 14:18 17:9 19:15,17 deductions 12:12 defendants 10:2 13:24 depending 19:13 depositions 7:21 desegregated 11:5 different 14:2 19:15 digital 3:12 dipped 6:15 direction 17:13 directly 7:19 discovery 2:1,4 5:6 6:17,25 7:18,19 13:9 14:12,14,25 15:4 discussed 16:7 discussion 8:11	discussions 7:25 11:22 12:6 dispute 6:23 district 1:2 5:4 document 12:23 16:19 documents 7:14,15 8:11 8:19 9:1,7,9 12:3,11,19 15:3,14,16,18 17:16,23 doing 11:24 16:25 doreen 2:25 21:3,7	entered 13:8 essentially 10:10 evaluated 11:6 evaluation 11:2 evans 4:10 6:2 everybody 17:23,24 everybody's 6:19 18:1 exact 14:5 exactly 10:3 13:20 14:10 except 9:16 exclusively 11:3 expect 8:7,10 expressed 9:2 extensiveness 19:13 extent 8:2	fifth 3:13 fighting 17:25 figure 8:25 11:19 19:24 file 16:13,17,18 filed 16:1,9,13 filing 8:8 16:4 16:20 17:10 first 5:7 fit 19:8 focused 9:25 focuses 11:3 folks 9:5 follow 6:14 following 17:12 19:4 foregoing 21:3 formally 8:6 forms 10:20 forth 7:10 11:2 frankly 14:6 15:2 16:12 friday 17:15 full 16:19 fully 6:16 function 14:1 furqaan 3:18 5:17 further 12:20
	e e 1:21,21 3:1,1 5:1,1 21:1 earlier 7:14 19:2 easier 16:12 19:24 ecf 16:20 ecro 1:25 effective 20:1 effectively 20:3 efficient 20:1 efforts 8:25 9:19 18:8 eighth 3:23 either 16:18 eleven 3:22 emery 4:4 6:1 ended 10:1	f f 1:21 21:1 fact 11:8 13:5 14:14 15:8 18:16,18 facts 19:8 fair 14:19,24 15:4,12 fairly 14:6 fall 12:1 far 8:9 favor 16:23 february 1:16 7:6 12:1 21:25	g g 5:1 game 14:19 15:12 gander 14:8 general 7:24 8:4 9:14,19 11:9,12,23

[general - lines]

Page 4

12:4,9,14 16:3 general's 7:2,4 7:13 8:1 genesis 1:7 5:5 getting 5:7 given 15:7 16:5 17:14 18:16 global 1:7 go 12:20 going 8:3 10:8 15:3 16:4,15 good 5:2,9,13 5:15,18,20,23 5:25 6:3,6,21 14:7,7 16:24 goofed 6:11 goose 14:7 gotshal 3:11 5:16 8:23 15:23 gottlieb 3:3 5:10 6:22 17:9 granularity 19:10 great 17:3 green 1:13 greer 4:9 5:25 18:24 griffith 4:9 5:25 6:1 13:15 18:22,24,24 19:22 ground 18:3 group 3:12,21 4:5 5:19,24 13:3,10,14 14:19 18:25	h h 1:22 half 8:8 hamilton 3:3 5:10 happening 16:10 18:20 harder 20:3 headed 11:18 heads 16:22 hearing 19:1 hoc 3:21 4:5 5:19,24 13:2 13:10,14 14:19 18:25 hold 14:24 holdco 1:7 hon 1:22 honor 5:9,15 5:20,25 6:6,21 8:22 10:14 13:1,4,12,15 15:22,25 16:10 17:5,8,21 18:9 18:22,24 19:22 20:6,10,11 honor's 17:13 hope 18:5 hour 8:8	inaudible 11:3 indicated 12:22 individual 13:24 information 8:17 12:12 14:5 16:5 initial 7:13 inquired 7:21 instance 14:3 intention 19:5 19:6 interest 18:1 interested 6:20 interesting 13:5 investigated 8:6 involves 18:4 issue 5:6 6:18 9:6,16 10:7 14:22 17:4 18:8 issues 14:13 15:20 18:6,12	judge 1:23 5:2 july 7:5,15 jump 6:16 justifiable 9:21
			k
			kaul 4:17 6:6,6 13:1 kessler 3:8 5:9 5:10 6:17,21 6:22 9:2 10:11 17:8,8 18:12 kessler's 8:24 kind 14:5 know 9:12 10:18 11:11,15 11:18,20 12:16 12:18 14:10 15:3 16:10,24 17:25 18:4,7 18:19 20:3 known 6:12
			l
	i idea 19:20 improper 14:16 inadvertently 6:5	j jeff 5:17 jeffrey 3:17 15:22 joe 6:2 joined 5:11 jordan 4:2 5:21 joseph 4:10 josh 3:16 5:15 8:22 18:10	lane 1:22 5:2 late 8:12 12:1 lawsuit 15:9 lay 17:24 layout 19:7 led 14:16 legal 21:20 liberty 3:5 light 7:22 15:15 line 12:7 lined 11:23,24 lines 7:20

[link - point]

Page 5

link 16:19 litigation 15:11 18:16 little 13:11 llc 1:7 llp 3:3,11,20 4:12 logistics 19:24 look 11:11 14:12 looking 14:25 looks 15:4 lot 14:1 lots 20:1 luxury 18:5	mineola 21:23 minutes 16:2 19:3,8,9,11 missed 13:17 morning 5:2,9 5:11,13,15,18 5:20,21,23,25 6:3,4,6 7:11 15:21 motion 2:2,5 7:1 9:12 16:2	ny 1:14 3:6,14 3:24 4:7,15 21:23	p
			p 3:1,1 5:1 papers 17:22 17:25 19:11 parameter 8:10 part 13:12 partially 16:19 particular 8:4 particularly 15:2 parties 10:4 14:2,16 15:8,9 16:6,8 19:3,17 partner 5:11 party 9:14 13:10,23 20:4 past 7:20 18:7 18:13 pending 2:2,4 7:1 people 16:14 16:20 17:1 19:19 people's 15:11 period 7:4,6,7 7:14,18 8:16 9:3 11:25,25 12:1,8,15,21 14:6 persaud 1:25 person 19:25 perspective 8:2 plan 16:7 plaza 3:5 point 8:24 10:5 11:15,21 15:1
m	n	o	
make 6:4,13,18 8:8 10:8 12:12 13:24 17:11,22 20:3 making 6:11 17:21 manges 3:11 5:16 matter 1:5 matters 15:4 mcdermott 4:4 6:1 mean 13:20,25 14:3 meet 18:14 mentioned 7:17 19:3 merits 11:13 14:13 mid 17:15	n 3:1 5:1 21:1 narrow 8:10 necessarily 12:7 need 9:6 12:11 12:12 15:17 19:9 needs 6:4,13 15:20 16:8,14 17:18 negotiate 12:18 negotiating 12:13 negotiations 11:1 12:3,6 new 1:2,14 3:6 3:14,24 4:7,15 5:4 7:1,3,12,23 8:1,4,6 9:13,19 11:9,11,23 12:4,9,14 16:3 notion 13:19 13:22 number 7:17 19:15,18	o 1:21 5:1 21:1 o'clock 5:4 o'neal 3:9 5:12 objection 16:1 17:15 objections 19:14,16 obviously 16:23 17:2 18:3,16 19:10 19:23 october 7:12 office 7:4 8:1 official 12:25 okay 15:24 old 21:21 once 16:17 opening 19:4 19:20 opinion 11:4 opposed 19:25 original 16:20 outer 12:17 overlap 10:5 10:16 11:1 12:7,21 overlapped 10:4 overlapping 13:21 14:15 overlooked 6:5	

[poorly - send]

Page 6

poorly 18:20 position 8:17 11:8 possession 15:19 possible 15:17 17:19 18:5 potential 8:5 pre 12:5 precise 10:6 premise 8:18 presence 6:11 pretty 6:23 preview 16:1,4 principally 11:21 procedures 17:12 proceedings 20:13 21:4 produce 7:11 18:11 produced 7:8 7:11 12:3,19 15:14,16 producing 8:18 15:18 production 17:14,16 18:4 productively 11:17 proper 17:12 proportional 15:5 proskauer 3:20 5:21	provide 7:14 provided 12:11 pull 11:10 purported 7:22 purposes 14:14 put 10:11 11:2	refused 7:14 relative 7:23 8:16 10:10 relevance 12:22 relevancy 12:18 relevant 9:7,10 10:13 11:1 12:14 14:9,18 14:24 remain 16:14 remove 18:8 reply 17:11,15 represented 11:25 12:10 request 12:23 requests 2:1,4 6:25 7:3,9 resolve 18:6 respect 8:4 10:15,19 12:2 responding 19:15 response 7:8 8:24 responsive 7:16 9:8 13:9 result 10:2 rfp's 9:8 right 5:13,18 6:3,9,14 8:20 9:24 12:24 13:2,13,16,17 13:24 17:7 18:15 20:4,5	road 21:21 rolling 15:17 17:14 room 6:19 12:24 rose 3:20 5:21 rosen 4:1 5:20 5:21 13:4 roughly 19:18 ruling 2:4 15:13 run 10:8
	q	question 19:1 questioning 7:21,24 10:10 questions 7:24 10:15 quick 8:23 quickly 18:5	s
	r	r 1:21 3:1 5:1 21:1 range 9:22 11:14 rather 17:23 read 9:24 really 9:16,20 12:21 13:6 14:3 15:11 17:1 18:4 19:9 reason 18:11 reasonable 9:22 11:14 reasonableness 15:10 reasons 13:19 received 16:6 record 6:22 21:4 redacted 16:8 17:2	s 3:1,8 4:1 5:1 saferstein 3:17 5:17 15:22,23 15:25 17:5,10 saying 10:9 12:13 18:5 sazant 4:2 5:22 seal 16:5,9,14 16:17 17:11 sean 1:22 3:9 5:2,12 searched 8:13 15:14 searching 8:18 see 13:18,18 14:8 16:8 20:8 seeking 7:1 seem 14:19 15:2 seems 14:6,17 14:24 15:4,5 15:12 send 16:13,23 17:2

<p>sense 13:24 19:9 separate 10:7 separately 11:6 11:7 sequoia 4:17 6:6 served 6:25 13:8 set 7:16 8:10 15:2 settle 7:1 9:19 13:25 settled 9:15 11:7 settlement 7:22 7:25 8:5 9:13 9:14,21,22 11:1,2,5,9,13 11:22 13:6,7 13:11,23 15:10 15:10 16:3 settling 14:1,1 shl 1:3 shoes 18:6 short 10:1 17:9 siddiqui 3:18 5:17 sides 11:18 signature 21:5 silos 13:22 siloed 11:8,8 siloing 10:6 simple 18:7 simply 8:17 13:22</p>	<p>sitting 17:21 skeleton 19:7 small 8:9,10 18:17 solutions 21:20 something's 17:2 soon 15:16 17:19 20:8 sort 9:11 10:23 11:18 12:16,17 16:16,21 sought 7:5,18 sounds 15:14 southern 1:2 5:3 speaker 20:6,9 20:11 specifically 5:5 splitting 19:18 square 3:22 start 5:7 6:18 12:25 15:18 statement 19:4 statements 19:21 states 1:1,12 5:3 steen 3:3 5:10 step 16:15,15 16:21,21 18:1 stick 10:1 straightforw... 6:23 street 3:23 stuff 19:25</p>	<p>subsequent 16:18 sue 14:16 sued 14:17 sufficient 19:16 suite 21:22 support 19:17 sure 6:18 8:22 9:23 17:11 surprised 16:25 suspect 17:10 system 16:20</p> <p>t</p> <p>t 21:1,1 take 18:8 taken 11:7 18:2 talking 12:5,8 14:3,11 technically 9:8 tell 8:14,21 terms 10:4 15:3 17:13 thank 6:11,21 8:22 13:12,13 16:21 17:3,5 18:9,20 19:22 20:7,9,11 theoretically 10:13 things 7:2 17:9 19:10 20:2 think 6:17,23 7:19 8:7 9:9,11 9:25 10:9,11</p>	<p>10:14,21 11:10 11:17 12:9,16 12:17,21 14:23 16:15 17:18 18:13 19:14 thinks 9:18 thomas 3:8 thought 13:5 13:11 time 7:4,17 8:10,16 9:3 11:25,25 12:1 12:8,14,20 13:25 19:16 20:7 timeframe 14:21,22,23,23 times 3:22 timespan 12:4 timing 7:25 11:21,22 today 6:1,14 20:8 toe 6:15 together 18:18 18:25 tom 5:9 6:22 17:8 tomorrow 17:17 18:11 totally 10:7 transcribed 2:25 transcript 21:4 trouble 10:6,12 true 21:4</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[trust - zoom]

Page 8

trust 15:13	values 11:14	8:22,23 10:14
try 9:5 11:19	vanderbilt 4:6	13:5 18:9,10
trying 11:16	various 10:4	white 4:12 6:7
12:20	19:7,17	work 11:16
two 10:15	veritext 21:20	16:7 17:11
16:15,21 17:9	view 10:5	18:12,20 19:12
type 18:18	14:15,25 15:1	19:19 20:3
u	views 6:19	working 9:5
u.s. 1:23	15:11	18:18
ultimately 10:5	virtual 6:19	written 6:10
under 9:15	virtually 3:8,9	x
16:5,9,14,17	3:16,17,18 4:1	x 1:4,10
17:11	4:2,9,10,17	y
underlying	volume 8:14	yeah 17:18
10:16	voluminous	19:6,11
understand 8:9	15:2	yesterday 8:12
14:21 16:21	w	16:7
understanding	wait 15:17	york 1:2,14 3:6
8:13 10:12	want 11:20	3:14,24 4:7,15
understood	16:4 17:24	5:4 7:1,4,13,23
11:20	wanted 12:18	8:1,4,6 9:13,19
undertaken	12:19 15:25	11:9,12,23
8:25	16:9	12:4,9,14 16:3
unidentified	wants 13:17	z
20:6,9,11	17:20	zoom 19:25
united 1:1,12	water 6:15	20:1
5:3	way 13:18 14:8	
universe 8:25	14:11,25 15:6	
unredacted	we've 12:3,11	
16:18,19,24	16:5 18:13	
unsecured 4:13	wednesday	
6:7	1:16	
v	week 7:20 19:2	
value 7:23	weil 3:11 5:16	
10:10 11:12	8:23 15:23	
	wesneski 3:16	
	5:15,16 8:20	